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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 HILLARY WALLS,

12 Plaintiff,

13 v.

14 PIERCE COUNTY JAIL *et al.*,

15 Defendants.

Case No. C07-5153RJB

ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND AND  
DIRECTING SERVICE BY MAIL BE  
ATTEMPTED.

16 This civil rights action has been referred to the undersigned Magistrate Judge pursuant to  
17 Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has been given leave to proceed *in forma pauperis*. Before  
18 the court is plaintiff's motion to amend the complaint (Dkt. # 55).

19 This action was commenced in March of 2007. Plaintiff filed a deficient complaint and the  
20 court ordered an amended complaint be filed (Dkt # 8). Plaintiff moved to amend just prior to the  
21 court's order and the proposed first amended complaint did not cure the defects in the original  
22 complaint. The court refused to accept this amended complaint and gave plaintiff until May 18,  
23 2007, to file an acceptable complaint (Dkt # 9).

24 Plaintiff complied with the court order after a Report and Recommendation was issued to  
25 dismiss the case (Dkt # 12). On July 3, 2007, the court ordered service be attempted by mail on the  
26 defendants named in the second amended complaint. Harold Clarke, the Pierce County Jail, Sgt.  
27

1 Breiner, Vince Goldsmith, and Sgt. Jackson appear to have accepted service by mail (Dkt. # 21 to  
2 49). Other named defendants remain unserved. A scheduling order was entered September 26,  
3 2007, (Dkt # 48). Harold Clarke was subsequently dismissed from the action as plaintiff did not  
4 intend to name him when he named the "Chief of Corrections."

5 All of the complaints raise a Fourth Amendment claim. Plaintiff alleges his medical  
6 information is being improperly disseminated by jail medical staff because of the way they conduct  
7 business. On November 20, 2007, plaintiff moved to file another amended complaint. This  
8 complaint names six new defendants (Dkt. # 55). The defendants are only identified by last names.  
9 The new defendants are Scott, Balderrama, Masko, Pastor, Pederson, and Holmes (Dkt # 55).  
10 Plaintiff now raises the issue that his grievances were not investigated to his satisfaction, and he  
11 alleges a claim of conspiracy with regard to the jail grievance system.

12 Plaintiff alleges a conspiracy to obstruct completion of the grievance process (Dkt # 55). The  
13 United States Constitution does not mandate that prison officials allow the filing of grievances or  
14 that a prison have a grievance system. Mann v. Adams, 855 F.2d 639 (9th Cir. 1988). Once in  
15 place, however, a petitioner is entitled to utilize the grievance system free from retaliation or  
16 conspiracy in violation of his due process rights.

17 Pursuant to Federal Rule of Civil Procedure 15 (a) a party may amend a complaint once  
18 without leave of court. Plaintiff has amended more than once and now needs leave of court. Leave  
19 to amend shall be "freely given." Fed. R. Civ. P. 15 (a). This is plaintiff's third amended complaint.  
20 The motion to amend is **GRANTED**. The proposed complaint, (Dkt # 55), is now the operative  
21 complaint in this action.

22 The clerk's notes indicate nine copies of the amended complaint and nine marshal service  
23 forms have been received. The clerk is directed to effect service as provided below.

24 (l) Service by United States Marshal.

25 It is hereby ORDERED that the United States Marshal shall send the following to each  
26 named defendant for whom there is a filled out service form by first class mail: a copy of the  
27 complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service

1 of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to  
2 the Clerk's Office. All costs of service shall be advanced by the United States. The Clerk shall  
3 assemble the necessary documents to effect service.

4 (2) Response Required

5 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service  
6 of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after  
7 the date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the  
8 complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

9 Any defendant who fails to timely return the signed Waiver will be personally served with a  
10 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
11 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under  
12 Rule 12 within **thirty (30) days** after service.

13 (3) Filing and Service by Parties, Generally.

14 All original documents and papers submitted for consideration by the court in this case, are to  
15 be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-  
16 hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The papers  
17 shall be accompanied by proof that such documents have been served upon counsel for the opposing  
18 party (or upon any party acting *pro se*). The proof shall show the day and manner of service and  
19 may be written acknowledgment of service, by certificate of a member of the bar of this court, or by  
20 affidavit of the person who served the papers.

21 (4) Motions.

22 Any request for court action shall be set forth in a motion, properly filed and served. The  
23 motion shall include in its caption (immediately below the title of the motion) a designation of the  
24 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third  
25 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs  
26 and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the  
27 Monday immediately preceding the Friday appointed for consideration of the motion. If a party fails

1 to file and serve timely opposition to a motion, the court may deem any opposition to be without  
2 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday immediately  
3 preceding the Friday designated for consideration of the motion, a response to the opposing party's  
4 briefs and affidavits.

5 (5) Motions for Summary Judgment

6 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
7 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a  
8 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary  
9 judgment if the moving party has shown the absence of issues of material fact and an entitlement to  
10 judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials  
11 of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the  
12 nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine  
13 issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present  
14 counter evidence could result in the Court accepting the moving party's evidence as the truth, and  
15 entering final judgment in favor of the moving party without a full trial. Rand v. Rowland, 113 F.3d  
16 1520 (9th Cir. 1997).

17 (6) Direct Communications with District Judge or Magistrate Judge

18 No direct communication is to take place with the District Judge or Magistrate Judge with  
19 regard to this case. All relevant information and papers are to be directed to the Clerk. The clerk is  
20 directed to effect service as provided below.

21 (I) Service by United States Marshal.

22 It is hereby ORDERED that the United States Marshal shall send the following to each  
23 named defendant for whom there is a filled out service form by first class mail: a copy of the  
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13 1520 (9th Cir. 1997).

14 (6) Direct Communications with District Judge or Magistrate Judge

15 No direct communication is to take place with the District Judge or Magistrate Judge with  
16 regard to this case. All relevant information and papers are to be directed to the Clerk.

17 The Clerk is directed to send a copy of this Order to plaintiff and counsel who have appeared  
18 in the case.

19  
20 DATED this 13 day of December, 2007.

21 /S/ J. Kelley Arnold  
22 J. Kelley Arnold  
23 United States Magistrate Judge  
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